S. B. CIVIL SECOND APPEAL NO.40/2007.
(Madan Mohan v. Chuni Lal)

Date of Order: : 08-02-2007

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr.D.R.Bhandari, for appellant.

Heard learned counsel for the appellant,

The plaintiff's suit for injunction was partly decreed by the trial Court vide impugned judgment and decree dated 13th December, 2002. By this decree, the trial Court directed the defendant to use the lane in between the two houses so that the plaintiff's property may not be damaged, because of the water flow.

The plaintiff, being aggrieved against the judgment and decree of the trial Court, preferred first appeal, which was dismissed by the First Appellate Court. The First Appellate Court also dismissed the cross-objection filed by the respondent – defendant. Hence, this second appeal by the plaintiff.

Learned counsel for the appellant vehemently submitted that issue No.3 was wrongly framed by the trial Court and further relied upon the 'patta' which was granted in favour of predecessor-in-title of the plaintiff-appellant and which admittedly has not been tendered in evidence, despite the fact, according to the plaintifff, copy of the said 'patta' was produced

before the trial Court. Learned counsel for the appellant also read the statment of the plaintiff.

After going through the facts of the case and the statement of the plaintiff, this Court is of the view that the plaintiff failed to prove the lane in between the two houses to be of his ownership land. The two courts-below carefuly considered the facts and evidence on record and rightly did not consider the copy of the 'patta' of the plaintiff's predecessor-in-title, in view of the fact that the said 'patta' was not tendered in evidence by the plaintiff. In the second appeal, the appellant has placed on record the certified copy of the list of documents to show that the 'patta' was in fact produced before the trial Court. However, learned counsel for the appellant frankly admitted that the 'patta' was neither tendered in evidence, nor there is evidence on this 'patta'.

In view of the above, no substantial question of law is involved in this appeal. Hence, the appeal is dismissed.

(PRAKASH TATIA),J.

Scd.